

ESTTA Tracking number: **ESTTA476487**

Filing date: **06/06/2012**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Kikin Limited
Granted to Date of previous extension	06/06/2012
Address	132 Crosby Street, 4th Floor New York, NY 10012 UNITED STATES
Attorney information	Nicole E. Gage and Kelly M. Weiner Foley & Lardner LLP 111 Huntington Ave Boston, MA 02199 UNITED STATES ngage@foley.com, bostonipdocketing@foley.com, mgregory@foley.com, kweiner@foley.com

Applicant Information

Application No	85023952	Publication date	02/07/2012
Opposition Filing Date	06/06/2012	Opposition Period Ends	06/06/2012
International Registration No.	NONE	International Registration Date	NONE
Applicant	KIK INTERACTIVE INC. 283 Dawlish Avenue Toronto, Ontario, M4N1J4 CANADA		

Goods/Services Affected by Opposition

Class 009.

All goods and services in the class are opposed, namely: computer software for use in downloading, displaying, transmitting, receiving, editing, extracting, encoding, decoding, playing, and storing data, namely, audio, video and photographic data; sound recordings featuring radio broadcasts featuring newscasts and sporting events, music, sound effects and ringtones; video recordings featuring music, digital video games, films, television shows, commercials, news reports and instructional courses in the field of arts, languages, history, science and mathematics; downloadable image files containing photographs

Class 042.

All goods and services in the class are opposed, namely: providing a website featuring temporary use of non-downloadable computer software for sending and receiving digital data, namely, audio, video and photographic data, by means of telecommunications networks, wireless communication networks, and the Internet

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	3779228	Application Date	02/12/2009
Registration Date	04/20/2010	Foreign Priority Date	NONE
Word Mark	KIKIN		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 2009/05/31 First Use In Commerce: 2009/10/31 Downloadable computer software for creating personalized indexes of websites and personalized indexes of other internet based information resources Class 038. First use: First Use: 2009/05/31 First Use In Commerce: 2009/10/31 Providing access to collections of information tailored to individual user selected criteria by means of global computer networks		

Attachments	77669268#TMSN.jpeg (1 page)(bytes) NOTICE OF OPPOSITION - KIK - 85-023952.pdf (7 pages)(600244 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/kellymweiner/
Name	Kelly M. Weiner
Date	06/06/2012

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Mark: KIK
Serial No: 85/023,952
Filed: April 27, 2010
Published: February 7, 2012

kikin Limited

Opposer,

v.

KIK INTERACTIVE INC.

Applicant.

Opposition No. _____

NOTICE OF OPPOSITION

kikin Limited, a company organized and existing under the laws of the Cayman Islands, located and doing business at 132 Crosby Street, 4th Floor, New York, New York 10012 (“Opposer”), believes that it will be damaged by the registration of Application Serial No. 85/023,952 (the “Application”) filed by Kik Interactive Inc. (“Applicant”), and hereby opposes the same.

The Application was published for Opposition on February 7, 2012, and an extension of time to oppose was granted through June 6, 2012.

The grounds for opposition are as follows:

1. Opposer is the owner of U.S. Registration No. 3,779,228 for the mark KIKIN in association with the following goods and services:

IC 009: Downloadable computer software for creating personalized indexes of websites and personalized indexes of other internet based information resources.

IC 038: Providing access to collections of information tailored to individual user selected criteria by means of global computer networks.

(The “KIKIN Registration.”) A copy of the KIKIN registration is attached hereto.

2. The Application on which the KIKIN Registration is based was filed on February 12, 2009.
3. The KIKIN Registration issued on April 20, 2010.
4. The KIKIN Registration is valid and subsisting and is conclusive evidence of Opposer’s exclusive right to use KIKIN in connection with at least the goods and services specified in the KIKIN Registration.
5. Since prior to use of KIK by Applicant in the U.S. or the alleged effective filing date of the Application, Opposer has continuously used the KIKIN mark in connection with the goods and services listed in the KIKIN Registration as well as in connection with services in International Class 42, including but not limited to, the provision of software interfaces over a network, data extraction and retrieval over a network and services related to the creation of personalized indexes of a website and other information sources over a global computer network.
6. The Application was filed by Applicant in the U.S. on April 27, 2010, with an asserted basis of Applicant’s intent to use the mark KIK in U.S. commerce under Section 1(b) of

the Trademark Act and under Section 44(d) of the Trademark Act (15 U.S.C. §§ 1051(b) and 1126(d) respectively).

7. The Applicant alleged a priority filing date of October 30, 2009.

8. The Application as published lists the following goods and services:

IC 009: computer software for use in downloading, displaying, transmitting, receiving, editing, extracting, encoding, decoding, playing, and storing data, namely, audio, video and photographic data; sound recordings featuring radio broadcasts featuring newscasts and sporting events, music, sound effects and ringtones; video recordings featuring music, digital video games, films, television shows, commercials, news reports and instructional courses in the field of arts, languages, history, science and mathematics; downloadable image files containing photographs

IC 042: providing a website featuring temporary use of non-downloadable computer software for sending and receiving digital data, namely, audio, video and photographic data, by means of telecommunications networks, wireless communication networks, and the Internet

9. The filing date for the KIKIN Registration predates Opposer's alleged effective filing date for the Application.

10. Opposer has superior rights by virtue of the prior filing date of the application for KIKIN that registered as the KIKIN Registration and by virtue of Opposer's prior use of the KIKIN mark in U.S. commerce.

11. The goods and services identified in the Application are highly related to Opposer's goods and services provided under the KIKIN mark.

12. On information and belief Applicant's goods and services are offered through overlapping channels of trade with Opposer's goods and services.

13. On information and belief Applicant's goods and services target many of the same class of consumers as Opposer's goods and services.

14. Applicant's Mark as applied to the goods and services in the Application and the KIKIN Mark are confusingly similar in overall commercial impression, appearance and sound, such that the trade and relevant consumers are likely to erroneously conjure an association between Applicant's Mark and the KIKIN Mark and are likely to be confused, mistaken and deceived into believing that the goods and services of Applicant are provided, sponsored, licensed or approved by Opposer, that Applicant's and Opposer's goods and/or services emanate from the same source and/or that Applicant is in some other fashion connected or associated with Opposer.
15. If Applicant is permitted to register KIK for the goods and services set forth in the Application, confusion of the trade and public is likely to occur, such confusion resulting in damage and injury to Opposer.

WHEREFORE, Opposer prays that this Opposition be granted and the registration sought by Applicant be refused.

The required fee of \$600 is being submitted with this Notice of Opposition. Please charge any additional costs to our Deposit Account No. 19-0741.

Respectfully submitted,

FOLEY & LARDNER LLP

Dated: New York, New York
June 6, 2012

By: 

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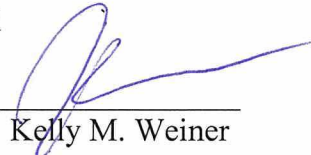
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Boston, MA 02199

Attorneys for Opposer

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing NOTICE OF OPPOSITION was served by first-class mail the 6th day of June 2012 upon Applicant's correspondent of record, as follows:

Janet L. Cullum
Cooley LLP
777 6th Street, NW, Suite 1100
Washington DC 20001



Kelly M. Weiner

United States of America

United States Patent and Trademark Office

KIKIN

Reg. No. 3,779,228

Registered Apr. 20, 2010

Int. Cls.: 9 and 38

TRADEMARK

SERVICE MARK

PRINCIPAL REGISTER

KIKIN LIMITED (CAYMAN ISLANDS COMPANY)
132 CROSBY STREET, FLR 4
NEW YORK, NY 10012

FOR: DOWNLOADABLE COMPUTER SOFTWARE FOR CREATING PERSONALIZED INDEXES OF WEBSITES AND PERSONALIZED INDEXES OF OTHER INTERNET BASED INFORMATION RESOURCES, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 5-31-2009; IN COMMERCE 10-31-2009.

FOR: PROVIDING ACCESS TO COLLECTIONS OF INFORMATION TAILORED TO INDIVIDUAL USER SELECTED CRITERIA BY MEANS OF GLOBAL COMPUTER NETWORKS, IN CLASS 38 (U.S. CLS. 100, 101 AND 104).

FIRST USE 5-31-2009; IN COMMERCE 10-31-2009.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SN 77-669,268, FILED 2-12-2009.

JANICE L. MCMORROW, EXAMINING ATTORNEY



David S. Kappas

Director of the United States Patent and Trademark Office